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VIA ECFHonorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

Since my June 4, 2020 report to the Court, I have had a joint call with counsel for Federal Defenders, Inc., along with their representatives and with counsel for the Government and representatives of the Metropolitan Detention Center ("MDC") and

Metropolitan Correctional Center (“MCC”). I have also spoken separately with counsel for MDC and MCC.¹

This week, my conversations with the Federal Defenders and the Government have focused on the following topics:

1. Plaintiffs’ desire to increase both the length and number of available videoconferences currently available at both institutions.
2. Defendants’ proposal for increasing the length and number of available videoconferences currently available at both institutions.
3. The current status of in-person legal visitation at both institutions.
4. The handling of legal mail at both institutions.
5. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.

I have also received and reviewed the reports submitted by the parties on June 10, 2020. *See* ECF Nos. 67 & 69. My discussions with the parties this week were substantive and productive. We discussed the institutions’ current strategies for increasing access, issues concerning in person visits, and issues concerning legal mail. Both parties are prepared to discuss the issues related to expanded video access and planning for the resumption of in-person legal visits.

II. Telephonic Contact

This was the eighth week in which the parties scheduled and facilitated legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC.

A. MCC

According to the information I have from MCC and Federal Defenders, MCC received 102 requests for phone calls since June 5, 2020. Each of these calls was completed. Once again this week, I received information from Federal Defenders raising concerns about inmate privacy during a legal call at MCC. The MCC has been made aware of this issue.

¹ We held a joint call on June 11, 2020. I spoke with MDC and MCC on June 10, 2020.

B. MDC

According to the information I have from the Federal Defenders, MDC received 184 call requests since June 5, 2020. 163 of these were completed, seventeen were attempted but not completed, two were cancelled by the attorney, and one could not be completed because the inmate was transferred out of the facility. The last call was not completed for unknown reasons and I have asked the institution to provide additional information on that call.

III. Videoconferencing

A. MCC

According to both Federal Defenders and MCC's records, there were twenty-seven videoconferences scheduled to take place this week. Twenty-seven were completed as scheduled.

B. MDC

According to both Federal Defenders and MCC's records, there were fourteen videoconferences scheduled to take place this week using either the courthouse VTC system or one of MDC's VTC units. Twelve were completed as scheduled. One was cancelled by an inmate because he told staff he felt sick. Another was not completed because of an administrative error.

C. Expansion of Video Access

The government provided its initial plan to expand videoconferencing access to plaintiffs last week. Specifically the MDC set forth its plan, since enacted, to expand the videoconference schedule for the courthouse based unit from half hour segments on Tuesdays and Wednesdays to one hour segments on those days. On Thursdays, MDC continues to offer two hour VTCs using the courthouse based unit, as it has since April 2, 2020. In addition to expanding the videoconference schedule for the courthouse based unit, MDC increased the number of VTCs it facilitated using its own newly acquired VTCs. MDC now offers four, thirty-minute videoconferences per day using these units, up from the two per day it previously offered. The MCC set forth its plan, also since enacted, to offer videoconferencing during the morning hours from 9-12 on Tuesdays and Thursdays, with availability Monday, Wednesday and Friday subject to the court calendar. These additional hours expanded video conferencing access at the MDC and MCC by 69% and 60% respectively.

The MDC has secured additional temporary staff which has allowed them to provide evening telephone hours from June 9 to June 19, 2020. The MDC is discussing the possibility of utilizing the videoconference equipment to provide video access during these evening hours. IT staff are not on duty during the evening hours so these calls would not have the support of video calls made earlier in the day. I will continue to address this issue with the parties.

IV. Legal Mail

The parties discussed issues with legal mail within the institutions, the Plaintiffs having provided information this week regarding ongoing problems with the handling of legal mail. The government noted that they continue to look into the specific instances provided and have in one instance spoken with counsel regarding the labeling of mail. Federal Defenders also agreed to disseminate to the CJA panel a sample, to be provided by the institutions, of the labeling required to ensure proper handling as legal mail. Federal Defenders will also continue to alert the mediation team and the institutions to problems with legal mail.

V. In-Person Legal Visits

The parties' joint discussion also focused on the issue of in-person visiting. Both parties are in agreement that in-person visits are the preferable means of ensuring access to counsel, and that a return to the previous in-person visiting schedule would be ideal. Both parties recognize that a return to the full schedule may not be immediately possible and that the institutions will need to provide telephonic and video access in conjunction with the resumption of in-person visits. The parties and I will continue to discuss ways to determine an effective balance.

The government provided a general update on the logistics of in-person visits in its report of June 10. Further discussion was had on the planning process itself. The parties will continue to discuss specific issues of concern to the defense bar for consideration in the planning process. I will continue to discuss the issue with the parties and the Wardens.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
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